

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

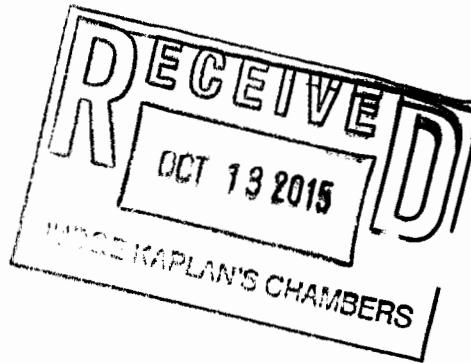
A.F., an infant over the age of 14 years, by his natural guardian and mother, ELIZABETH FELDMAN; and ELIZABETH FELDMAN,

Plaintiffs,

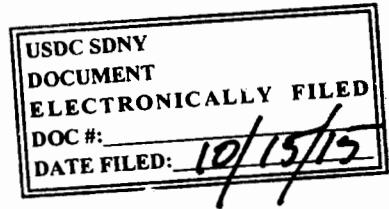
v.

UNITED STATES OF AMERICA,

Defendant.



14 Civ. 374 (LAK)



~~Joint~~ PRETRIAL ORDER

The parties having conferred among themselves and with the Court pursuant to Fed. R. Civ. P. 16, the following statements, directions and agreements are adopted as the Pretrial Order herein.

**I. NATURE OF THE CASE**

Plaintiff A.F., a minor, claims that a doctor, who was employed at a federally funded health center, was negligent in providing treatment to A.F. on August 10, 2011, during a cryotherapy procedure to treat warts on the first and second toes of A.F.'s left foot. Plaintiff A.F. asserts a claim for medical malpractice under the Federally Supported Health Centers Assistance Act, 42 U.S.C. § 233, and the Federal Tort Claims Act, 28 U.S.C. §§ 2671 *et seq.* Plaintiffs do not allege any other claims, and are not pursuing the claims of Elizabeth Feldman in her individual capacity.

**II. JURY/NON-JURY**

The parties agree that this is a non-jury case, see 28 U.S.C. § 2402, and estimate 1-2 days for trial.

**III. STIPULATED FACTS**

1. The Open Door Family Medical Centers ("Open Door") is a health service organization that receives funds from the U.S. Department of Health and Human Services, and during the relevant periods at issue in this matter, Open Door was covered by the Federally Supported Health Centers Assistance Act, 42 U.S.C. § 233.

2. Open Door operates medical centers, including a health center in Ossining, New York.

3. During 2011, Dr. Onyinye Okpukpara, a licensed physician, board certified in family medicine, was employed at Open Door in Ossining.

4. Elizabeth Feldman is the mother and natural guardian of A.F.

5. From at least May 2011 through August 2011, A.F. was a regular patient of the Open Door facility.

6. On May 5, 2011, A.F. went to Open Door and was seen by Dr. Colleen Eng, who was a physician employed by Open Door in its Ossining location.

7. On June 1, 2011, A.F. went to Open Door and was seen by Dr. Eng.

8. On June 17, 2011, A.F. went to Open Door and was treated by Dr. Eng with cryotherapy for warts on his left foot.

9. On June 29, 2011, A.F. went to Open Door and was treated by Dr. Eng with cryotherapy for warts on his left foot.

10. On July 27, 2011, A.F. went to Open Door and was treated by Dr. Eng with cryotherapy for warts on his left foot.

11. On August 10, 2011, A.F. went to Open Door and was treated by Dr. Okpukpara with cryotherapy for warts on his left foot.

12. On August 11, 2011, A.F. went to Open Door and was seen by Dr. David Lar, who was employed at that time by Open Door in its Ossining location.

13. On August 12, 2011, A.F. went to Open Door and was seen by Dr. Okpukpara.

14. On Saturday, August 13, 2011, A.F. went to the Great Wolf Lodge, a water-themed amusement park, with his father, David Feldman. A.F. and his father left the Great Wolf Lodge on August 14, 2011.

15. On August 20, 2011, A.F. went to the emergency room at Phelps Memorial Hospital Center in Sleepy Hollow, New York.

16. On August 22, 2011, A.F. went to the emergency room at Westchester Medical Center in Valhalla, New York.

17. On August 25, 2011, A.F. went to the wound care center at Westchester Medical Center.

18. On September 1, 2011, A.F. went to Westchester Medical Center, where he had an operation on September 2, 2011. He was discharged from Westchester Medical Center on September 7, 2011.

19. There are no other relevant visits to healthcare providers other than the visits to doctors identified in paragraphs 6-18 above.

20. Dr. Okpukpara did not treat or meet with A.F. other than at the August 10, 2011, and August 12, 2011, patient visits at Open Door.

#### IV. JOINT EXHIBITS

**JX1:** Open Door Medical Record from May 6, 2011, of A.F.'s visit to Open Door, bates stamped USA\_AF00111-13.

**JX2:** Open Door Medical Record from June 1, 2011, of A.F.'s visit to Open Door, bates stamped USA\_AF00106-10.

**JX3:** Open Door Medical Record from June 17, 2011, of A.F.'s visit to Open Door, bates stamped USA\_AF00102-05.

**JX4:** Open Door Call Record from June 22, 2011, of Elizabeth Feldman's call to Open Door and Dr. Okpukpara's response, bates stamped USA\_AF00392.

**JX5:** Open Door Medical Record from June 29, 2011, of A.F.'s visit to Open Door, bates stamped USA\_AF00097-99.

**JX6:** Open Door Medical Record from July 27, 2011, of A.F.'s visit to Open Door, bates stamped USA\_AF00094-96.

**JX7:** Open Door Medical Record from August 10, 2011, of A.F.'s visit to Open Door, bates stamped USA\_AF00090-91.

**JX8:** Open Door Call Record from August 10, 2011, of Elizabeth Feldman's call to Open Door and Dr. Okpukpara's response, bates stamped USA\_AF00393.

**JX9:** Open Door Medical Record from August 11, 2011, of A.F.'s visit to Open Door, bates stamped USA\_AF00088-89.

**JX10:** Open Door Medical Record from August 12, 2011, of A.F.'s visit to Open Door, bates stamped USA\_AF00086-87.

**JX11:** Open Door Call Record from August 20, 2011, of Elizabeth Feldman's call to Open Door, bates stamped USA\_AF00394

**JX12:** Phelps Memorial Hospital Center Medical Record from August 20, 2011, of A.F.'s visit to Phelps Memorial Hospital Center Emergency Room, bates stamped USA\_AF00363-76.

**JX13:** Open Door Call Record from August 22, 2011, at 9:28 a.m., of Elizabeth Feldman's call to Open Door and Dr. Okpukpara's response, bates stamped USA\_AF00395.

**JX14:** Westchester Medical Center Medical Record from August 22, 2011, of A.F.'s visit to Westchester Medical Center, bates stamped USA\_AF00577-591.

**JX15:** Open Door Call Record from August 22, 2011, at 3:08 p.m., of Elizabeth Feldman's call to Open Door and Dr. Okpukpara's response, bates stamped USA\_AF00396.

**JX16:** Open Door Call Record from August 22, 2011, at 3:08 p.m., of Elizabeth Feldman's call to Open Door and Dr. Okpukpara's response, bates stamped USA\_AF00397.

**JX17:** Open Door Call Record from August 24, 2011, of Dr. Okpukpara's call to Elizabeth Feldman, bates stamped USA\_AF00398.

**JX18:** Westchester Medical Center, Office of Dr. Joseph Turkowski, Medical Record from August 25, 2011, of A.F.'s visit to Dr. Turkowski's Office, bates stamped USA\_AF00380.

**JX19:** Open Door Call Record from August 26, 2011, of Dr. Okpukpara's call to Elizabeth Feldman, bates stamped USA\_AF00399.

**JX20:** Westchester Medical Center Medical Record from September 1, 2011, through September 7, 2011, of A.F.'s visit to Westchester Medical Center, bates stamped USA\_AF00426-575.

**JX21:** Open Door Call Record from September 2, 2011, of Dr. Okpukpara's call to Elizabeth Feldman, bates stamped USA\_AF00400.

**JX22:** Westchester Medical Center, Office of Dr. Joseph Turkowski, Medical Record from September 15, and September 29, 2011, of A.F.'s visit to Dr. Turkowski's Office, bates stamped USA\_AF00378-79.

**JX23:** Open Door Consent Forms for procedures conducted at Open Door on June 17, 2011, June 29, 2011, July 27, 2011, and August 10, 2011, bates stamped USA\_AF00034-37.

**JX24:** Photographs marked as Exhibits 2-6 at the deposition of David Lar, M.D.

**JX25:** Four Photographs of Aaron Feldman and/or his left foot, three dated 10/6/11, 11/8/11, 12/7/11, respectively, and one undated.

## **V. GENERAL PROVISIONS, STIPULATIONS AND OBJECTIONS WITH RESPECT TO EXHIBITS**

1. Each party asserts no objection to and stipulates to the authenticity, relevance, and admissibility of the joint exhibits as listed in herein in Section IV.

## **VI. PLAINTIFF'S WITNESS LIST**

1. A.F. – Plaintiff
2. Elizabeth Feldman – Plaintiff and A.F.'s mother and natural guardian
3. Peter Acker. M.D. – medical expert, pediatrics.
4. Onyinye Okpukpara, M.D. -- physician who treated A.F. on August 10 and 12, 2011
5. David Lar, M.D. -- physician who treated A.F. on August 11, 2011 (by deposition taken December 10, 2014):
  - P. 7, L. 3 to P. 9, L. 6
  - P. 10, L. 3 to 25
  - P. 11, L. 12 to 18
  - P. 17, L. 2 to P. 18, L. 25
  - P. 20, L. 10 to P. 21, L. 2
  - P. 30, L. 20 to P. 33, L. 9
  - P. 36, L. 25 to P. 37, L. 15
  - P. 42, L. 15 to P. 43, L. 2

**VII. DEFENDANT'S WITNESS LIST**

1. A.F. – Plaintiff
2. Elizabeth Feldman – Plaintiff and A.F.’s mother and natural guardian
3. David Feldman –A.F.’s father
4. Onyinye Okpukpara, M.D. – doctor who treated A.F. on August 10 and August 12, 2011
5. Amy Veliz – physician’s assistant who took A.F.’s vitals during A.F.’s visit to Open Door on August 11, 2011
6. Brenda Molina – physician’s assistant who took A.F.’s vitals during A.F.’s visit to Open Door on August 12, 2011
7. James Mumford, M.D. -- medical expert, family medicine
8. Elizabeth Sieczka, M.D.-- medical expert, burns and plastic surgery
9. David Lar, M.D. -- physician who treated A.F. on August 11, 2011, who due to unavailability, will testify through his deposition, dated December 10, 2014:  
P19, L7-L22  
P38, L2- L22  
P41, L14 - P42, L6  
P43, L11 - P44, L1

### VIII. RELIEF SOUGHT

Plaintiff seeks damages for A.F.'s pain and suffering, past and future, including the scars on his left foot.

Dated: October 9, 2015  
New York, New York

IROM, WITTELS, FREUND, BERNE &  
SERRA, P.C.

By: s/ Wesley M. Serra (WS-0466)

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SO ORDERED:

  
HON. LEWIS A. KAPLAN  
United States District Judge

Dated: 10/15/15